

**NOTICE OF EVENTS GIVING RISE TO CLAIM  
PURSUANT TO WIS. STAT. §893.82**

SERVED BY CERTIFIED MAIL THIS 28<sup>TH</sup> DAY OF JULY, 2006.

TO: Peggy A. Lautenschlager  
Attorney General  
State of Wisconsin  
Risser Justice Center  
17 West Main Street  
Madison, WI 53702

CLAIMANT: The City of Franklin  
9229 W. Loomis Road  
Franklin, WI. 53132  
414-425-7500

DATE OF EVENT: March 30, 2006.

PLEASE TAKE NOTICE THAT the City of Franklin, by its attorneys, Piper & Schmidt, hereby give notice of the following circumstances giving rise to a claim:

In 2003, Billy Lee Morford, a registered sex offender and adjudged sexually violent person, was committed to the custodial supervision of the Department of Health and Family Services (DHFS), pursuant to the provisions of Wisconsin Statute Chapter 980. In 2004, after Morford applied for community release, DHFS presented a supervision plan to the Milwaukee County Circuit Court that included a provision for part-time employment at a location within the City of Franklin. The employment proposal was rejected by the court.

On March 30, 2006, the Franklin Chief of Police discovered that DHFS had nonetheless assigned Morford to engage in part-time employment at the City of Franklin address that had been rejected by the circuit court, and that he had been so employed for over a year. It was further determined that the location of Morford's part-time

employment was the same address at which he had been accused of an earlier sexual offense that lead to a previous revocation of his parole.

The Franklin Chief of Police was never notified by DHFS, or any other state agency, of the placement of Morford at the Franklin address.

**FIRST CLAIM** - Public Nuisance- Wisconsin Department of Health and Family Services.

**INVOLVED PERSON** - Helene Nelson, Secretary, State of Wisconsin Department of Health and Family Services, 1 West Wilson Street, Madison, WI.

A "sexually violent person" is "a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect, or illness, and who is dangerous because he or she suffers from a mental disorder that makes it likely that the person will engage in acts of sexual violence." Wis. Stat. § 980.01(7). Wis. Stat. § 980.06 establishes that if a court or jury determines that the person who is the subject of a petition under 980.02, is a sexually violent person, the court shall order the person to be committed to the custody of the department for control, care and treatment until such time as the person is no longer a sexually violent person.

A person who has been committed to state custody as a sexually violent person may petition the committing court for an order authorizing supervised release after eighteen (18) months of institutionalization in a secure mental health facility or unit. Wis. Stat. § 980.08; Wis. Stat. § 980.065. Wis. Stat. § 980.08 also provides that an order for supervised release of a sexually violent person places the person in the custody and control of DHFS. Pursuant to Wis. Stat. § 980.08(6m), each person on supervised release

is subject to the conditions set by the court and to the rules implemented by DHFS. Wis. Stat. § 980.08 also sets the requirements for what DHFS is to review, evaluate, report and prescribe, both to the court and to the community into which the sexually violent person will be released, as part of the rules which are contemplated by the statute related to the sexually violent person who is the subject of the release order.

Wis. Stat. § 301.45, establishes a sex offender registry, and Wis. Stats. §301.45(1g)(dt), applies the terms and requirements of the sex offender registration statute to sexually violent persons committed under Wis. Stat. ch. 980. Wis. Stat. § 301.45(2), requires in part that the State of Wisconsin Department of Corrections maintain certain information about persons subject to the sex offender registration statute, including the terms and details of that person's employment. Wis. Stat. § 301.45(1d), defines "employment" as employment or vocational activity that is full-time or part-time for a continuous period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered or for the purpose of government or educational benefit.

The purposes underlying the statutory registration requirements of Wis. Stat. § 301.45 are to protect the public and to assist law enforcement officials. *In re Joseph E.G.*, 240 Wis.2d 481, 623 N.W.2d 137, review denied, (Ct. App. 2000). The sex offender registration requirement is a safeguard to protect past victims and to protect the public in general. *State v. Bollig*, 224 Wis.2d 621, 593 N.W.2d 67 (Ct. App. 1999), *aff'd*, 232 Wis.2d 561, 605 N.W.2d 199.

Wis. Stat. § 301.46 dictates the reporting requirements of the agency with jurisdiction for the confinement or supervision of a committed person. An agency with jurisdiction means "the state agency with the authority or duty to confine or supervise a

person or release or discharge a person from confinement" pursuant to Wis. Stat. § 301.46(1)(a), and here, upon information and belief, is DHFS directly, or DHFS by its contract with the State of Wisconsin Department of Corrections (hereinafter "DOC"). Further, § 301.46 (2) imposes upon the agency with jurisdiction an affirmative duty to notify municipal law enforcement of specified information concerning a committed person by "direct electronic data transfer". The agency is also to provide information via "direct electronic data transfer" about any person registered as a sex offender, to any requesting municipal police chief or county sheriff.

Wis. Stat. § 301.46(2m)(am) further requires, among other things, that if involving a person who has been found to be a sexually violent person under Wis. Stat. ch. 980, the agency with jurisdiction shall notify the police chief of any community and the sheriff of any county in which the person will be residing, employed or attending school. This notification is in addition to the information to be provided under the direct electronic data transfer system in Wis. Stat. § 301.46(2) and to any other notification that an agency with jurisdiction is authorized to provide.

Wis. Stat. §301.46(2m)(am) mandates that the notification to the police chief or county sheriff be in the form of a written bulletin, and that it contain, among other things, detailed information regarding the person's name, including any aliases; physical characteristics; conviction information; supervised release date; the address at which the person is residing; the name and telephone number of the agency responsible for supervision; the name and address of the place at which the person is employed; and [a]ny other information that the agency with jurisdiction determines is necessary to assist law enforcement officers or to protect the public... includ[ing] a photograph of the person, other identifying information and a description of the person's patterns of violation."



Wis. Stat. § 301.46(2m)(b)2.

Upon information and belief, DHFS has not promulgated a set of rules or standards for the supervision of Wisconsin Statutes Ch. 980 persons who have been, or are on, authorized supervised. Upon information and belief, DHFS references other agency regulations and guidelines (e.g. Wisconsin Department of Correction Sex Offender Manual) but has failed to reference or incorporate these other agency guidelines into their own standards. By failing to have general supervision policies in place for Ch. 980 persons, DHFS is endangering public safety and causing a public nuisance.

**SECOND CLAIM** - Public Nuisance- Wisconsin Department of Corrections.

**INVOLVED PERSON** - Matthew J. Frank, Secretary, State of Wisconsin Department of Corrections, 3099 East Washington Avenue, Madison, WI 53707-7850.

Upon information and belief, the "direct electronic data transfer" referred to in Wis. Stat. § 301.46 is known to law enforcement personnel as WILENET and is administered by the Wisconsin Department of Correction (hereinafter "DOC"). Upon information and belief, WILENET contains information regarding registered sex offenders including residence, school and/or employment. A law enforcement agency may only search WILENET by registered sex offender's residence. A search of a sex offender's place of school and/or employment is not available. Upon information and belief, for a law enforcement agency to obtain information regarding a registered sex offender's school and/or employment information in their community, they must search every registrant individually. Upon information and belief, the Wisconsin Sex Registry contains over 18,000 individuals. When a registrant changes or obtains employment, DOC does not individually notify the law enforcement agency in the community where the employment is occurring. Rather, DOC simply updates that individual's record in the

sex registry. By failing to give meaningful notification to community law enforcement personnel and allowing them the opportunity to take any appropriate actions, DOC is endangering public safety and creating a public nuisance.

**THIRD CLAIM - Declaratory Judgment as to DHFS Definition of "Treatment."**

**INVOLVED PERSONS** – Helene Nelson, address above, and Steve Watters, Institute Director, Sand Ridge Secure Treatment Institute, 1111 North Road, Mauston, WI.

Wisconsin Stat. § 51.30 (1)(b) states "Treatment records include the registration and all other records concerning individuals who are receiving or who has at any time have received services for mental illness, development disabilities, alcoholism or drug dependence which are maintained by the department, county departments and treatment facilities." DHFS officials assert that the names and addresses of all "approved chaperones" of Ch. 980 persons are considered treatment and that, due to the confidentiality of medical records, DHFS cannot release this information to law enforcement personnel.

Upon information and belief, chaperone visits are considered "normal" social activities by DHFS, and, therefore, the names and addresses of the chaperones are not covered under the definition set forth in Wis. Stats. § 51.30 (1)(b) as treatment and are not protected by any confidentiality.

**FOURTH CLAIM - Sanctions for Contempt of Court or failure to obtain court approval of statutory supervision plan.**

**PERSONS INVOLVED** – Helene Nelson, Steve Watters

DFHS claims that the chaperoned visits of Billy Lee Morford to the residence in Franklin were not employment, and therefore no notification to Franklin's Chief of Police under the Wisconsin Sex Offender Registry was necessary.

Wis. Stat. § 301.45(1d)(a) states: "'Employed or carrying on a vocation' means 'employment or vocational activity that is full-time or part-time for a continuous period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered or for the purpose of government or educational benefit.'"

In an effort to comply with Wis. Stat. §980.08(5), DHFS presented a plan for the supervised release of Billy Lee Morford. DFHS representative Deborah McCulloch represented to the Honorable Mary Kuhnmuensch on February 20, 2004 that Morford had a part-time "employment" opportunity at the identified residence in the City of Franklin. Judge Kuhnmuensch denied the request due to lack of more information and details available.

This particular site and this location was the scene of an alleged attempted child enticement by Billy Lee Morford on or about October 20, 1994, against a 10 year old boy, which caused revocation proceedings at the time and returned Billy Lee Morford to confinement. This information does not appear to have been presented to Judge Kuhnmuensch.

DFHS was denied its request for non-traditional employment for Billy Lee Morford, yet now asserts that Morford's eventual visits to the same address that was rejected by Judge Kuhnmuensch differed from the original employment proposal to the court. The activities Morford engaged in were very similar to the proposal and included "helping with chores and puttering with engines". DFHS states there was not a

compensation structure ever established or arranged which signifies it was not to be considered employment. According to applicable statutes, however, employment does not hinge on compensation and even volunteer work would be applicable. The twice per week visits of Mr. Morford also exceeded the time requirement set forth in the statute.

DFHS, through Ms. Nelson and Mr. Watters, as responsible supervisors, violated its/their duty to the public by side-stepping the court ruling and obtaining its/their desired result of placing Morford at the judicially rejected Franklin address. DFHS approved by different avenues the exact same behavior/arrangement which was disallowed by the court. Morford's activities at the Franklin address were employment under the statute and DFHS' conduct in placing Morford at that address for that purpose violated the court's decision, and DHFS' failure to present a follow-up application to the court dictating the terms of Morford's placement at the rejected address was sanctionable as being in contempt of the court order set forth on February 20, 2004, or as a failure to follow the petition proceedings of Wis. Stat. §980.08(5), and its requirements that the Department submit a supervised release plan that is subject to court approval.

#### **FIFTH CLAIM – Mandamus**

**PERSONS INVOLVED** - Helene Nelson, Steve Watters, Matthew Frank, and the State of Wisconsin, a body politic.

The statutes cited herein, the supporting case law, and the facts presented show that DHFS, DOC, and Sand Ridge are to have promulgated and have in effect rules that set forth custody, release and supervision policies, and rules for Wis. Stat. ch. 980 sexually violent persons who are in DHFS custody and under DHFS supervision; specifically, for those sexually violent persons under supervised release who are not on probation and not on parole. DHFS has no discrete set of rules and regulations as



required by statute, and its contracted responsibilities with DOC are statutorily inadequate; therefore DHFS, DOC, Sand Ridge, and the State of Wisconsin must be ordered to act to promulgate a set of those rules as is reasonably anticipated by controlling statutes.

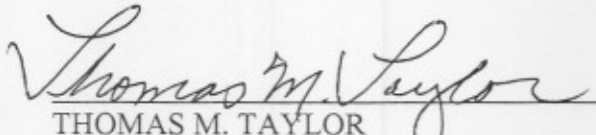
Dated this 28<sup>th</sup> day of July, 2006.

PIPER & SCHMIDT  
Attorneys for Claimant, City of Franklin

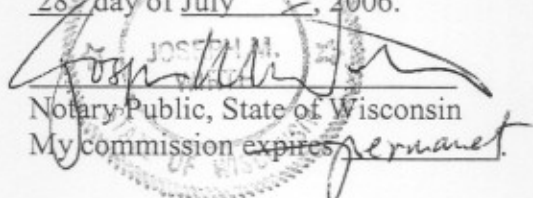
By: 

JOSEPH M. WIRTH  
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(414) 225-4060  
State Bar No. 1012080

I, Thomas M. Taylor, Mayor, City of Franklin, Claimant, and on its behalf, swear that after diligent inquiry, interview and investigation, the contents of this Notice are true.

  
THOMAS M. TAYLOR

STATE OF WISCONSIN  
MILWAUKEE COUNTY  
Subscribed and sworn to before me this  
28<sup>th</sup> day of July, 2006.

  
Notary Public, State of Wisconsin  
My commission expires permanet.